



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes: MND,MNDC, MNSD, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages to the unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. For a monetary for compensation for loss or other money owed;
2. For all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This matter commenced on July 17, 2017, an interim decision was issued and should be read in conjunction with this decision.

Preliminary matter

At the outset of the hearing of the tenant's application, the landlord's agent stated that the tenant has spelled the landlord's name wrong and seeks to either have the tenant's application dismissed or amended.

In this case, I find it reasonable to amend the tenant's application to correct the spelling of the landlord's name.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is either party entitled to the security deposit?

Is the tenant entitled to a monetary order for damages?

Background and Evidence

The tenancy began on June 15, 2006. Rent in the amount of \$1,060.00 was payable on the first of each month. The tenant paid a security deposit of \$475.00. The tenancy ended on January 30, 2017.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the report

Landlord's application

The landlord reduced their claim as follows:

a.	Blind Cleaning	\$ 105.00
b.	Replace 7 dimmer and remove electrical wiring	\$ 600.00
c.	Damage to wall	\$ 10.00
d.	Kitchen counter damage	\$ 50.00
e.	Filing fee	\$ 100.00
	Total claimed	\$ 865.00

Blind Cleaning

The landlord's agent testified that the blinds were not cleaned at the end of the tenancy. The landlord seeks to recover the cost of blind cleaning in the amount of \$105.00.

The tenant's agent testified that they are relying upon the move-out condition inspection report the blinds were left in good condition at the end of the tenancy.

Electrical repair

The landlord's agent testified that during the tenancy the tenant changed the wiring by adding a light fixture to the ceiling and by adding seven dimmer switches. The agents

stated that no other rental unit has this light fixture or dimmer switches and these were not there when the tenancy commenced. The agent stated that the wiring, and tracking had to be removed. The landlord seeks to the recover the cost of the repairs.

The tenant's agent testified that the electrical is the same as when their mother moved into the premises. The tenant's agent stated that their mother is over 70 years old and she would never change electrical wires. The tenant's agent testified that their mother would always call them first. The tenant's agent testified that the only thing their mother added was the light to the existing wiring.

Damage to wall

The landlord's agent testified that the tenant left a large hole in the wall that needed to be repaired. The landlord seeks to recover the amount of \$10.00.

The tenant's agent testified that this is normal wear and tear after reasonable use of over 10 years.

Kitchen countertop damage

The landlord's agent testified that the tenant caused damage to the countertop by burning two holes. The landlord seeks to recover the amount of \$50.00. Filed in evidence are photographs.

The tenant's agent testified that the countertop was not new at the start of the tenancy and this is normal wear and tear for a tenancy over 10 years.

Tenant's application

The tenant claims as follows:

a.	Removal and prorated cost of couch due to bed bugs	\$ 750.00
b.	Return of security deposit and Interest	\$ 490.72
c.	Filing fee	\$ 100.00
	Total claimed	\$1,340.72

The tenant's agent testified that the landlord did not due proper bedbug treatment as they should have done three treatments when they first discovered the problem, not one. The tenant stated that as a result their mother's couch had to be disposed of. The tenant seeks the cost of the removal and a prorated cost for the couch in the amount of \$750.00.

The landlord's agent testified that they are not responsible for the tenant's personal belonging. The landlord stated that they treated the rental unit as required and it was

not necessary initial to do a second treatment as no bedbug activity was found. The landlord's agent stated it was not until six months later that they were notified any further problems. Filed in evidence are pest control receipts.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the each party has the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Section 21 of the Act states a condition inspection report completed in accordance with this section is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord(s) reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Blind cleaning

In this case, I have review the move-out condition inspection report. The move-out report shows that all window covering were left in good condition. I find the landlord has not provided a preponderance amount of evidence to the contrary that the window covering were left dirty. Therefore, I find the landlord has failed to prove this portion of their claim.

Electrical

In this case, I am not satisfied that the landlord has proven that the tenant added wiring or dimmer switches to the rental unit as there were no photographs provided by the landlord of the unit at the start of the tenancy.

Further, even if it was proven, which it was not, this tenancy exceeded 10 years. At no time during the tenancy did the landlord bring this matter to the tenant's attention so it could be dealt with or investigated. I find the tenant had the right to rely upon the landlord's lack of actions. Therefore, I dismiss this portion of the landlord's claim.

Wall hole

I am not satisfied that the hole in the wall is above normal wear and tear and under reasonable use after a tenancy of 10 years. I find the landlord failed to prove a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Countertop

I am not satisfied that the tenant caused damage to the countertop that was above normal wear and tear. The move-in condition inspection report shows that the countertop was burnt and scratched at the start of the tenancy. The landlord has provided two photographs; however, there is no way for me to determine if the tenant or the previous occupant caused these. I find the landlord has failed to prove a violation of the Act by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Based on the above, I find the landlord has failed to prove their claim. Therefore, I dismiss their application. As the landlord was not successful the landlord is not entitled to recover their filing fee.

The tenant's security deposit will be dealt with at the conclusion of this decision.

Tenant's application

In this case the tenant is claiming for the cost of removal, disposal, and the purchase of a new couch due to bed bugs. However, the landlord is not responsible for the removal, dispose, or replacement of furniture belonging to a tenant. The landlord is only required to treat items that are affected, such as heat treatments. Should a tenant choose to dispose of their furniture that is a personal choice. Therefore, I dismiss this portion of the tenant's claim.

As the tenant was not successful with their claim and the landlord was entitled to retain the security deposit unit the landlord's application was heard, I find the tenant is not entitled to recover the filing fee from the landlord.

As I have dismissed the landlord's application, I find the landlord has no authority to retain the tenant's security deposit and interest.

I order the landlord to return the tenant's security deposit of \$475.00 and interest of \$15.72 for the total amount of \$490.72. Should the landlord fail to return the security deposit, I grant the tenant a monetary order pursuant to section 67 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Both parties' respective applications are dismissed. The tenant is entitled to a monetary order for the return of their security deposit and interest in the above noted amount.

Dated: October 4, 2017

Residential Tenancy Branch